

ESTTA Tracking number: **ESTTA538577**

Filing date: **05/17/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	Roto-Rooter Corporation
Granted to Date of previous extension	05/22/2013
Address	300 Ashworth Road West Des Moines, IA 50265 UNITED STATES
Attorney information	Theodore R. Remaklus Wood, Herron & Evans, L.L.P. 441 Vine Street 2700 Carew Tower Cincinnati, OH 45202 UNITED STATES tremaklus@whe-law.com Phone:513-241-2324

### Applicant Information

Application No	85689385	Publication date	01/22/2013
Opposition Filing Date	05/17/2013	Opposition Period Ends	05/22/2013
Applicant	ROOTER-ROOTER LLC 2000 Town Center, Suite 1900 Southfield, MI 48075 UNITED STATES		

### Goods/Services Affected by Opposition

Class 037. First Use: 2012/06/00 First Use In Commerce: 2012/06/00  
All goods and services in the class are opposed, namely: Municipal, commercial, industrial and residential drain and sewer cleaning and rooting services; Maintaining septic systems; Pumping septic tanks; Septic tank cleaning; Septic tank pumping and cleaning; Plumbing services; Sewer line installation and repair

### Grounds for Opposition

False suggestion of a connection	Trademark Act section 2(a)
Priority and likelihood of confusion	Trademark Act section 2(d)
Dilution	Trademark Act section 43(c)

### Marks Cited by Opposer as Basis for Opposition

U.S. Registration No.	597721	Application Date	12/14/1951
Registration Date	11/02/1954	Foreign Priority	NONE

		Date	
Word Mark	ROTO-ROOTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U103 (International Class 037). First use: First Use: 1935/01/01 First Use In Commerce: 1935/01/01 MUNICIPAL, INDUSTRIAL, AND DOMESTIC SEWER, DRAIN, AND PIPE CLEANING SERVICE		

U.S. Registration No.	745984	Application Date	08/25/1960
Registration Date	02/26/1963	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class U103 (International Class 037). First use: First Use: 1951/01/01 First Use In Commerce: 1951/01/01 Cleaning Sewer, Oil and Water Pipes, Field and Drain Tile Conduits for Electric Cable		

U.S. Registration No.	1199063	Application Date	12/12/1980
Registration Date	06/22/1982	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1935/01/01 First Use In Commerce: 1979/10/00 Municipal, Industrial, and Domestic Sewer, Drain and Pipe Cleaning Service		

U.S. Registration No.	1221194	Application Date	04/23/1981
Registration Date	12/21/1982	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1955/01/00 First Use In Commerce: 1955/01/00 Commercial, Industrial and Residential Plumbing Services; Sewer, Drain and Pipe Cleaning Services		

U.S. Registration No.	1228083	Application Date	06/22/1981
Registration Date	02/22/1983	Foreign Priority Date	NONE

Word Mark	ROTO-ROOTER
Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1981/03/25 First Use In Commerce: 1981/03/25 Solvent Drain Cleaner

U.S. Registration No.	1240752	Application Date	12/28/1981
Registration Date	06/07/1983	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1981/11/20 First Use In Commerce: 1981/11/20 Chemicals-Namely, a Formulation of Cultured Bacteria and Selected Enzymes for Use in Treating Septic Tanks and Cesspools		

U.S. Registration No.	1241460	Application Date	04/23/1981
Registration Date	06/07/1983	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER SEWER-DRAIN SERVICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1955/01/00 First Use In Commerce: 1955/01/00 Plumbing Repair; Pumping of Septic Tanks, Sewage and Waste Holding Tanks, Grease Traps and Portable Toilets; Threading of Wire and Cable Through Conduits; and Cleaning of Culverts, Boiler Tubes, Ship Boiler Lines, Fuel Lines and Downspouts		

U.S. Registration No.	1241730	Application Date	01/05/1982
Registration Date	06/14/1983	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER SEWER DRAIN SERVICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1981/11/20 First Use In Commerce: 1981/11/20 Chemicals-Namely, a Formulation of Cultured Bacteria and Selected Enzymes for Use in Treating Septic Tanks and Cesspools		

U.S. Registration No.	1242498	Application Date	06/22/1981
Registration Date	06/21/1983	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1981/03/25 First Use In Commerce: 1981/03/25 Solvent Drain Cleaner

U.S. Registration No.	1270267	Application Date	12/02/1982
Registration Date	03/13/1984	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER SEWER-DRAIN SERVICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1970/01/09 First Use In Commerce: 1970/01/09 Commercial Industrial and Residential Sewer Drain and Pipe Cleaning Services		

U.S. Registration No.	1303117	Application Date	10/06/1983
Registration Date	10/30/1984	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1982/01/25 First Use In Commerce: 1982/01/25 the Rental and Servicing of Portable Toilets		

U.S. Registration No.	1303118	Application Date	10/06/1983
Registration Date	10/30/1984	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER SEWER-DRAIN SERVICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1982/01/25 First Use In Commerce: 1982/01/25 the Rental and Servicing of Portable Toilets		

U.S. Registration No.	1331512	Application Date	07/30/1984
Registration Date	04/23/1985	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1984/05/17 First Use In Commerce: 1984/05/17 a Chemical for Destroying Roots in Pipes		

U.S. Registration No.	1331513	Application Date	07/30/1984
Registration Date	04/23/1985	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER SEWER-DRAIN SERVICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 001. First use: First Use: 1984/05/17 First Use In Commerce: 1984/05/17 Chemicals for Destroying Roots in Pipes		

U.S. Registration No.	1378746	Application Date	04/11/1985
Registration Date	01/21/1986	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 1984/01/23 First Use In Commerce: 1984/01/23 BACTERIAL/ENZYME ADDITIVE FOR CLEANING GREASE TRAPS		

U.S. Registration No.	1537809	Application Date	09/12/1988
Registration Date	05/02/1989	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1988/01/31 First Use In Commerce: 1988/01/31 INSPECTION OF PIPES AND SEWER LINES		

U.S. Registration No.	1537810	Application Date	09/12/1988
Registration Date	05/02/1989	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER PLUMBING SERVICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1988/01/31 First Use In Commerce: 1988/01/31 INSPECTION OF PIPES AND SEWER LINES		

U.S. Registration No.	1657942	Application Date	08/20/1990
Registration Date	09/24/1991	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER SEWER-DRAIN SERVICE		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 003. First use: First Use: 1984/01/23 First Use In Commerce: 1984/01/23 preparation for cleaning grease traps and drain lines

U.S. Registration No.	1739244	Application Date	04/19/1991
Registration Date	12/08/1992	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1991/11/01 First Use In Commerce: 1991/11/01 detection and location of underground pipes, ducts, lines and tanks		

U.S. Registration No.	1746585	Application Date	04/19/1991
Registration Date	01/12/1993	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER SEWER-DRAIN SERVICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 042. First use: First Use: 1991/11/30 First Use In Commerce: 1991/11/30 detection and location of underground pipes, ducts, lines and tanks		

U.S. Registration No.	2056267	Application Date	09/21/1995
Registration Date	04/22/1997	Foreign Priority Date	NONE
Word Mark	GET IT ROTO-ROOTER RIGHT		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1996/04/30 First Use In Commerce: 1996/04/30 commercial, industrial, and residential plumbing services; sewer, drain and pipe cleaning services		

U.S. Registration No.	2097379	Application Date	08/19/1996
Registration Date	09/16/1997	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1996/06/17 First Use In Commerce: 1996/06/17		

	municipal, industrial and residential plumbing, sewer, drain and pipe cleaning services
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U.S. Registration No.	2677783	Application Date	04/10/2002
Registration Date	01/21/2003	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER SEPTIC TANK SERVICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1989/12/15 First Use In Commerce: 1989/12/15 Pumping and cleaning septic tanks, sewage and waste holding tanks, grease traps and portable toilets		

U.S. Registration No.	2677785	Application Date	04/10/2002
Registration Date	01/21/2003	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER SEWER-DRAIN SERVICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1984/01/23 First Use In Commerce: 1984/01/23 Municipal, commercial, industrial and residential sewer, drain and pipe cleaning services		

U.S. Registration No.	2711057	Application Date	04/10/2002
Registration Date	04/29/2003	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER PLUMBERS		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 1984/01/23 First Use In Commerce: 1984/01/23 Municipal, commercial, industrial and residential plumbing services		

U.S. Registration No.	2797357	Application Date	02/13/2003
Registration Date	12/23/2003	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER PIPE SHIELD		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 003. First use: First Use: 2003/02/00 First Use In Commerce: 2003/02/00 Drain cleaner and preparation for cleaning grease traps and drain lines		

U.S. Registration	2798769	Application Date	04/10/2002
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No.			
Registration Date	12/23/2003	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER. PLUMBING & DRAIN SERVICE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 2002/02/01 First Use In Commerce: 2002/02/01 municipal, commercial, industrial and residential plumbing services; sewer, drain and pipe cleaning services		

U.S. Registration No.	2899989	Application Date	11/17/2003
Registration Date	11/02/2004	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 007. First use: First Use: 1935/03/00 First Use In Commerce: 1935/03/00 Sewer and drain cleaning machines		

U.S. Registration No.	3109660	Application Date	09/05/2002
Registration Date	06/27/2006	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER ENGINEERING SERVICES		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 2005/06/00 First Use In Commerce: 2005/06/00 Excavation, bursting and replacement of underground pipes, pipe-relining, pumping and cleaning septic tanks and grease traps, wet vacuuming and high pressure water jetting		

U.S. Registration No.	3549684	Application Date	05/02/2008
Registration Date	12/23/2008	Foreign Priority Date	NONE
Word Mark	ROTO-ROOTER BUSINESS ADVANTAGE		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 037. First use: First Use: 2008/04/30 First Use In Commerce: 2008/04/30 Commercial plumbing and drain cleaning services		

U.S. Registration No.	3811867	Application Date	04/08/2009
Registration Date	06/29/2010	Foreign Priority Date	NONE



Word Mark	ROTO-ROOTER SEWER SOLUTIONS
Design Mark	
Description of Mark	NONE
Goods/Services	Class 037. First use: First Use: 2009/05/00 First Use In Commerce: 2009/05/00 Municipal, commercial, industrial and residential plumbing services, and municipal, commercial, industrial and residential sewer, drain and pipe cleaning services

Attachments	Notice of opposition (roto-rooter).pdf(80342 bytes )
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### **Certificate of Service**

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/theodore r remaklus/
Name	Theodore R. Remaklus
Date	05/17/2013

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

_____	)	
Roto-Rooter Corporation,	)	Opposition No. _____
	)	
Opposer,	)	
	)	Application No. 85/689,385
v.	)	Published: January 22, 2013
	)	
Rooter-Rooter LLC,	)	
	)	
Applicant.	)	
_____	)	

**NOTICE OF OPPOSITION**

Opposer, Roto-Rooter Corporation, an Iowa corporation, having a place of business at 300 Ashworth Road West Des Moines, Iowa 50265 ("Opposer"), believes that it will be damaged by registration of the trademark ROOTER-ROOTER PLUMBING & DRAIN CLEANING ROOTER-ROOTER and Design of Application No. 85/689,385 for "municipal, commercial, industrial and residential drain and sewer cleaning and rooting services; maintaining septic systems; pumping septic tanks; septic tank cleaning; septic tank pumping and cleaning; plumbing services; sewer line installation and repair" in International Class 37, and hereby opposes the same.

**GROUND FOR OPPOSITION**

As grounds for this opposition, Opposer alleges as follows:

1. Opposer is the owner of the ROTO-ROOTER brand, which is one of the, if not the, most famous plumbing and sewer, drain and pipe cleaning services brands in the United States. The ROTO-ROOTER brand dates back to 1935, and it quickly expanded to provide nationwide services through a network of franchisees and licensees.

2. Opposer is the owner of the following "Roto-Rooter" bearing United States

Trademark Registrations:



Registration No. 597,721 (incontestable), registered November 2, 1954, claiming a first use date of January 1, 1935  
Class 37 – municipal, industrial, and domestic sewer, drain, and pipe cleaning service



Registration No. 745,984 (incontestable), registered February 26, 1963, claiming a first use date of January 1, 1951  
Class 37 – cleaning sewer, oil and water pipes, field and drain tile conduits for electric cable

**ROTO-ROOTER** Registration No. 1,199,063 (incontestable), registered June 22, 1982, claiming a first use date of October, 1979  
Class 37 – municipal, industrial, and domestic sewer, drain and pipe cleaning service

**ROTO-ROOTER** Registration No. 1,221,194 (incontestable), registered December 21, 1982, claiming a first use date of January, 1955  
Class 37 – commercial, industrial and residential plumbing services; sewer, drain and pipe cleaning services



Registration No. 1,228,083 (incontestable), registered February 22, 1983, claiming a first use date of March 25, 1981  
Class 3 – solvent drain cleaner

**ROTO-ROOTER** Registration No. 1,240,752 (incontestable), registered June 7, 1983, claiming a first use date of November 20, 1981  
Class 3 – chemicals-namely, a formulation of cultured bacteria and selected enzymes for use in treating septic tanks and cesspools



Registration No. 1,241,460 (incontestable), registered June 7, 1983, claiming a first use date of January, 1955  
Class 37 – plumbing repair; pumping of septic tanks, sewage and waste holding tanks, grease traps and portable toilets; threading of wire and cable through conduits; and cleaning of culverts, boiler tubes, ship boiler lines, fuel lines and downspouts



Registration No. 1,241,730 (incontestable), registered June 14, 1983, claiming a first use date of November 20, 1981  
Class 3 – chemicals-namely, a formulation of cultured bacteria and selected enzymes for use in treating septic tanks and cesspools



Registration No. 1,242,498 (incontestable), registered June 21, 1983,  
claiming a first use date of March 25, 1981  
Class 33 – solvent drain cleaner



Registration No. 1,270,267 (incontestable), registered March 13, 1984,  
claiming a first use date of January 9, 1970  
Class 37 – commercial industrial and residential sewer drain and pipe  
cleaning services

**ROTO-ROOTER** Registration No. 1,303,117 (incontestable), registered October 30,  
1984, claiming a first use date of January 25, 1982  
Class 37 – the rental and servicing of portable toilets



Registration No. 1,303,118 (incontestable), registered October 30, 1984,  
claiming a first use date of January 25, 1982  
Class 37 – the rental and servicing of portable toilets

**ROTO-ROOTER** Registration No. 1,331,512 (incontestable), registered April 23,  
1985, claiming a first use date of May 17, 1984  
Class 1 – a chemical for destroying roots in pipes



Registration No. 1,331,513 (incontestable), registered April 23, 1985,  
claiming a first use date of May 17, 1984  
Class 1 – a chemical for destroying roots in pipes

**ROTO-ROOTER** Registration No. 1,378,746 (incontestable), registered January 21,  
1986, claiming a first use date of January 23, 1984  
Class 3 – bacterial/enzyme additive for cleaning grease traps

**ROTO-ROOTER** Registration No. 1,537,809 (incontestable), registered May 2, 1989,  
claiming a first use date of January 31, 1988  
Class 42 – inspection of pipes and sewer lines



Registration No. 1,537,810 (incontestable), registered May 2, 1989,  
claiming a first use date of January 31, 1988  
Class 42 – inspection of pipes and sewer lines



Registration No. 1,657,942 (incontestable), registered July 2, 1991,  
claiming a first use date of January 23, 1984  
Class 37 – preparation for cleaning grease traps and drain lines

**ROTO-ROOTER** Registration No. 1,739,244 (incontestable), registered December 8, 1992, claiming a first use date of November 1, 1991  
Class 37 – detection and location of underground pipes, ducts, lines and tanks



Registration No. 1,746,585 (incontestable), registered January 12, 1993, claiming a first use date of November 1, 1991  
Class 37 – detection and location of underground pipes, ducts, lines and tanks

**GET IT ROTO-ROOTER RIGHT** Registration No. 2,056,267 (incontestable), registered April 22, 1997, claiming a first use date of April 30, 1996  
Class 37 – commercial, industrial, and residential plumbing services; sewer, drain and pipe cleaning services



Registration No. 2,097,379 (incontestable), registered September 16, 1997, claiming a first use date of June 17, 1996  
Class 37 – municipal, industrial and residential plumbing, sewer, drain and pipe cleaning services



Registration No. 2,677,783 (incontestable), registered January 21, 2003, claiming a first use date of December 15, 1989  
Class 37 – pumping and cleaning septic tanks, sewage and waste holding tanks, grease traps and portable toilets



Registration No. 2,677,785 (incontestable), registered January 21, 2003, claiming a first use date of January 23, 1984  
Class 37 – municipal, commercial, industrial and residential sewer, drain and pipe cleaning services



Registration No. 2,711,057 (incontestable), registered April 29, 2003, claiming a first use date of January 23, 1984  
Class 37 – municipal, commercial, industrial and residential plumbing services

**ROTO-ROOTER PIPE SHIELD** Registration No. 2,797,357 (incontestable), registered December 23, 2003, claiming a first use date of February, 2003  
Class 3 – drain cleaner and preparation for cleaning grease traps and drain lines



Registration No. 2,798,769 (incontestable), registered December 23, 2003, claiming a first use date of February 1, 2002  
Class 37 – municipal, commercial, industrial and residential plumbing services; sewer, drain and pipe cleaning services

**ROTO-ROOTER** Registration No. 2,899,989, registered November 2, 2004, claiming a first use date of March, 1935  
Class 3 – sewer and drain cleaning machines



Registration No. 3,109,660 (incontestable), registered August 3, 2004, claiming a first use date of June, 2005  
Class 37 – Excavation, bursting and replacement of underground pipes, pipe-relining, pumping and cleaning septic tanks and grease traps, wet vacuuming and high pressure water jetting

**ROTO-ROOTER BUSINESS ADVANTAGE** Registration No. 3,549,684, registered December 23, 2008, claiming a first use date of April 30, 2008  
Class 37 – commercial plumbing and drain cleaning services



Registration No. 3,553,452, registered December 30, 2008, claiming a first use date of April 30, 2008  
Class 37 – commercial plumbing and drain cleaning services

**ROTO-ROOTER SEWER SOLUTIONS** Registration No. 3,811,867, registered June 29, 2010, claiming a first use date of May, 2009  
Class 37 – municipal, commercial, industrial and residential plumbing services, and municipal, commercial, industrial and residential sewer, drain and pipe cleaning services

The above marks are referred to collectively herein as the "ROTO-ROOTER Marks".

3. Opposer and its franchisees and licensees have used the ROTO-ROOTER Marks continuously on or in connection with the above goods and services since the date of first use recited in the registrations. Opposer and its licensees and franchisees have expended large sums of money in the advertising of goods and services under the ROTO-ROOTER Marks. As a result of this long and widespread provision of plumbing and sewer, drain and pipe cleaning services, and related goods and services, and extensive promotion and advertising engaged in by Opposer and its licensees and franchisees, Opposer has become well known to the trade and the general public, and has established extensive good will, public recognition, and secondary meaning, in the ROTO-ROOTER Marks as an exclusive identification of Opposer. As a result

of the activities of Opposer, its licensees and franchisees, the ROTO-ROOTER Marks are distinctive and have become famous

4. On information and belief, Applicant is Rooter-Rooter LLC, a Delaware limited liability company with an address of 2000 Town Center, Suite 1900 Southfield, Michigan 48075 ("Applicant").

5. On information and belief, Applicant filed Application No. 85/689,385 (hereinafter "the '385 Application") on July 27, 2012 for the ROOTER-ROOTER PLUMBING & DRAIN CLEANING ROOTER-ROOTER and Design mark shown below ("the ROOTER-ROOTER Mark") for "municipal, commercial, industrial and residential drain and sewer cleaning and rooting services; maintaining septic systems; pumping septic tanks; septic tank cleaning; septic tank pumping and cleaning; plumbing services; sewer line installation and repair" in International Class 37, which application was published on January 29, 2013, and which includes a claimed first use date of June, 2012.



6. Opposer obtained an extension of time through and including May 22, 2013 in which to oppose the '385 Application, thus the present Notice of Opposition is timely filed.

7. Applicant's filing date and alleged first use date is subsequent to Opposer's first use of each of the ROTO-ROOTER Marks.

8. Opposer and its franchisees and licensees have used the ROTO-ROOTER Marks on the goods and services recited in those registration long prior to the time that Applicant first began using the ROOTER-ROOTER mark.

9. Applicant's ROOTER-ROOTER Mark is confusingly similar to the ROTO-ROOTER Marks. The use by Applicant of the ROOTER-ROOTER mark in connection with the recited services is likely to cause confusion among consumers as services that are the subject of the '385 Application are the same as, or highly related to, the services and related goods that are the subject of the ROTO-ROOTER Marks, they are sold and/or provided to the same or similar consumers, and the services are provided through the same or similar channels of trade.

10. Use of the ROOTER-ROOTER Mark is likely to cause confusion or to cause mistake or to deceive consumers by creating the false impression that Applicant's services originate with or are from the same source as Opposer's services, or are endorsed by, sponsored by, or otherwise connected or affiliated in some way with Opposer and the ROTO-ROOTER Marks.

11. Applicant's ROOTER-ROOTER Mark is likely to dilute Opposer's distinctive and famous ROTO-ROOTER Marks in violation of Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

12. Applicant is not entitled to use or register the ROOTER-ROOTER Mark for the services recited in the '385 Application.

13. Under Section 7(b) of the Lanham Act, 15 U.S.C. § 1057(b), if a certificate of registration were to issue to Applicant it would be *prima facie* evidence of, among other things, its right to use the mark in connection with providing and promoting the services recited in the



application, and such use would be likely to cause confusion, or to cause mistake, or to deceive purchasers by reason of the similarity thereof to Opposer's ROTO-ROOTER Marks.

WHEREFORE, Opposer believes that it will be damaged by registration of the ROOTER-ROOTER Mark, and prays that the '385 Application be refused and registration denied.

The fee required under 37 C.F.R. § 2.6(a)(17) is being submitted herewith. The Commissioner is authorized to charge Deposit Account No. 23-3000 for any deficiencies in the filing fee and any and all other fees associated with filing the Notice of Opposition.

Respectfully submitted,

Roto-Rooter Corporation

Date: May 17, 2013

By: /s/ Theodore R. Remaklus  
Theodore R. Remaklus  
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(513) 241-6234 (Facsimile)

Attorneys for Opposer  
Roto-Rooter Corporation

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing **Notice of Opposition** has been served by first class mail, postage prepaid, upon counsel for Applicant, Josh Gerben, Gerben Law Firm, PLLC, 1050 Connecticut Ave. NW, FL 1011, Washington, D.C. 20036-5334, the listed correspondence address, this 17th day of May, 2013.

/s/ Theodore R. Remaklus

Theodore R. Remaklus

Attorney for Opposer  
Roto-Rooter Corporation